

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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WILLIAM K. DUFFY, KENNETH HUBER,  
PHILLIP CAPOBIANCO, JOHN DUFFY,  
PAUL O'BRIEN, MARC HERBST, JAMES  
HANEY, JR., JAMES PRATT, III, SCOTT  
ADRIAN and ROBERT AHEARN, as Trustees  
of the Local 138, 138A & 138B, International  
Union of Operating Engineers Welfare Fund,  
Legal Fund, Apprenticeship Training Fund, and  
Annuity Fund, and MICHAEL FANNING as  
CEO of the Central Pension Fund,

**MEMORANDUM & ORDER**  
07 CV 753 (DRH) (ETB)

Plaintiffs,

-against-

BEAVER SITE, INC.,

Defendant.

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**HURLEY, Senior District Judge:**

On January 6, 2011, this Court granted plaintiffs' unopposed motion for summary judgment against defendant Beaver Site, Inc. and referred the case to Magistrate Judge E. Thomas Boyle, pursuant to 28 U.S.C. § 636(b)(3), for a report and recommendation as to damages, interest, liquidated damages, attorneys' fees, and costs. On May 16, 2011, Judge Boyle issued a Report and Recommendation that judgment be entered against defendant for the following amounts: (1) damages for unpaid contributions in the amount of \$358,701.63; (2) interest thereon in the amount of \$119,051.70, from June 1, 2003 through May 16, 2011, plus \$49.58 per day from May 17, 2011 through the date of judgment; (3) liquidated damages in the amount of \$119,051.70, plus additional liquidated damages of \$49.58 per day from May 17, 2011 through the date of judgment; (4) audit fees in the amount of \$18,747.00; (5) attorneys' fees in

the amount of \$18,601.25; (6) costs in the amount of \$ 879.45; and (7) post judgment interest to be calculated pursuant to 28 U.S.C. § 1961. On May 20, 2011, defendant Beaver Site, Inc. was served with a copy of the Report and Recommendation. More than fourteen days have elapsed since service of the Report and Recommendation. No party has filed any objections.

Pursuant to 28 U.S.C. § 636(b) and Federal Rule of Civil Procedure 72, this Court has reviewed the Report and Recommendation for clear error, and finding none, now concurs in both its reasoning and its result. Accordingly, the Court adopts the May 16, 2011 Report and Recommendation of Judge Boyle as if set forth herein. The Court therefore directs that Plaintiffs recover from defendant Beaver Site, Inc. the following amounts, as itemized below, and that judgment be entered accordingly, with post judgment interest to be calculated pursuant to 28 U.S.C. § 1961:

- (1) \$ 358,701.63 in damages;
- (2) \$119,051.70, plus \$49.58 per day from May 17, 2011 through the date of judgment, in interest;
- (3) \$119,051.70, plus \$49.58 per day from May 17, 2011 through the date of judgment, in liquidated damages;
- (4) \$18,747.00 in audit fees;
- (5) \$18,601.25 in attorneys' fees; and
- (6) \$ 879.45 in costs.

Upon entry of judgment, the Clerk of the Court is directed to close this case.

**SO ORDERED.**

Dated: Central Islip, New York

June 8, 2011

/s/

Denis R. Hurley  
United States District Judge